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April 1, 2019

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CenturyLink Petition for a Declaratory Ruling, Connect America Fund,
WC Docket No. 10-90; Developing a Unified Inter-carrier Compensation Regime,
CC Docket No. 01-92

Dear Ms. Dortch:

On behalf of CenturyLink, on March 28, 2019, I met with Randy Clarke, Acting Legal Advisor for Wireline and Public Safety for Commissioner O’Rielly, and on April 1, 2019, I met with Jamie Susskind, Chief of Staff for Commissioner Carr, regarding the above-captioned matter. The discussions were consistent with CenturyLink’s previous filings in this proceeding.¹ In particular, I emphasized the following points.

First, the Commission intended in the *Transformation Order*² for its new VoIP-PSTN framework to encompass both fixed (facilities-based) and nomadic (over-the-top) VoIP. Although it had sought comment on whether its framework should distinguish between fixed and nomadic VoIP—and despite AT&T’s urging it to do just that—the Commission declined to do so, and it expressly rejected AT&T’s argument that permitting carriers to impose access charges

¹ See Letter from John T. Nakahata, counsel to CenturyLink, to Marlene H. Dortch, FCC, WC Docket No. 10-90, et al., (filed Mar. 4, 2019) (*CenturyLink Mar. 4 ex parte*); see also Letter from John T. Nakahata, counsel to CenturyLink, to Marlene H. Dortch, FCC, WC Docket No. 10-90, et al., (filed Nov. 28, 2018). Copies of both filings were provided to the Commission attendees.

² Connect America Fund, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663 (2011) (*Transformation Order*).

in connection with over-the-top traffic would amount to imposing access charges on the Internet.³ Instead, even though it had initially proposed applying its framework only to interconnected VoIP (which itself would have included over-the-top VoIP), it decided to apply its framework to *all* VoIP-PSTN traffic.⁴ Doing so was important to address the Commission's concern that the then-existing "uncertainty" regarding compensation "may be affecting IP innovation and investment" and to ensure that its regulatory framework would not slow the spread of new, innovative services by placing them at a regulatory disadvantage as compared to "very limited VoIP products that merely mimic the circuit-switched offerings of the past."⁵ Accordingly, the only reasonable conclusion is that the Commission anticipated that LECs would not be prohibited from assessing end office switching charges on over-the-top traffic.

Second, the rule proposed by Verizon—that end office access charges should depend on whether the specific device that has connected to the VoIP server connects over a facility purchased from the LEC or the VoIP partner or whether it was purchased separately (i.e., whether the customer has "brought its own bandwidth")—is untenable.⁶ Such a rule would lead to absurd results, such as end office switching charges being dependent on which entity sends the bill to the customer for the same access facility or Internet service, or whether an employee of an enterprise sitting in a coffeeshop has keyed in a VPN code.⁷ Moreover, neither Verizon nor AT&T claims to actually apply such distinctions itself, and in fact it appears no carrier does so. Indeed, no carrier has explained how it would be possible to implement such a rule.

Third, the precedent AT&T and Verizon rely on in support of their proposed rule in fact supports CenturyLink's position, and, moreover, the holding of the *RAO 21 Reconsideration Order*⁸—that a switch must have the capability to redirect the voice channel on its own—cannot be reconciled with AT&T's assertion that the ISP actually performs the end office switching function, because the ISP does not have the capability to redirect the voice channel.⁹

Finally, a straightforward reading of incumbent LEC tariffs confirms that such tariffs apply to over-the-top VoIP traffic.¹⁰ CenturyLink has had both enterprise customers and VoIP provider customers that have purchased Primary Rate Interface (PRI) services from its

³ See *CenturyLink Mar. 4 ex parte* at 9-11.

⁴ See *id.*

⁵ Connect America Fund, WC Docket No. 10-90, et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 ¶ 611 (*Transformation NPRM*); see, e.g., *Transformation Order* at ¶¶ 941-42, 968.

⁶ Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 10-90, et al., at 2-3 (filed Feb. 7, 2019).

⁷ See *CenturyLink Mar. 4 ex parte* at 2-4.

⁸ See Petitions for Reconsideration and Applications for Review of RAO 21, Order on Reconsideration, 12 FCC Rcd 10,061 (1997) (*RAO 21 Reconsideration Order*).

⁹ See *CenturyLink Mar. 4 ex parte* at 4-8.

¹⁰ See *id.* at 11-14.

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incumbent LEC affiliates. For both types of customers, enterprises and VoIP providers, identical services were provided by CenturyLink's incumbent carriers, and in both cases, CenturyLink assessed end office switching charges pursuant to the terms of CenturyLink's incumbent LEC tariff. AT&T and Verizon's argument that "over the top" traffic cannot be subject to end office access charges in these situations cannot be reconciled with how incumbent LEC tariffs, including AT&T's and Verizon's own tariffs, have applied for many years.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

/s/ Joseph C. Cavender

Joseph C. Cavender

cc: Randy Clarke
Jamie Susskind